



**DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of: )  
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----- ) ISCR Case No. 15-00986  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Daniel F. Crowley, Esq., Department Counsel  
For Applicant: *Pro se*

04/21/2016

**Decision**

HARVEY, Mark, Administrative Judge:

Applicant’s statement of reasons (SOR) alleges eight delinquent debts totaling \$46,447, discharge of his nonpriority, unsecured debts under Chapter 7 Bankruptcy Code in 1997, and dismissal of his Chapter 13 Bankruptcy in October 2012. He failed to provide sufficient evidence about his finances and demonstrate enough progress resolving his SOR debts after October 2012. Financial considerations security concerns are not mitigated. Access to classified information is denied.

**History of the Case**

On April 30, 2014, Applicant completed and signed an Electronic Questionnaire for National Security Positions (e-QIP) (SF 86). (Item 3) On September 21, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued Applicant a statement of reasons (SOR) pursuant to Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG), which became effective on September 1, 2006.

The SOR detailed reasons why the DOD CAF did not find under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for him, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. Specifically, the SOR set forth security concerns arising under the financial considerations guideline.

On October 8, 2015, Applicant provided a response to the SOR, and he requested a decision without a hearing. On January 31, 2016, Department Counsel completed the File of Relevant Material (FORM). On February 5, 2016, Applicant received the FORM. On February 26, 2016, DOHA received Applicant's response to the FORM. On February 29, 2016, Applicant responded to the FORM. The Government's case consisted of nine exhibits. (Items 1-9) On April 4, 2016, the case was assigned to me.

### **Findings of Fact<sup>1</sup>**

In Applicant's SOR response, he admitted all of the SOR allegations. He also provided extenuating and mitigating information. Applicant's admissions are accepted as findings of fact.

Applicant is a 59-year-old engineer employed by a defense contractor since 1997.<sup>2</sup> In 1974, he graduated from high school. He did not attend college. He has never served in the military. He has never married, and he does not have any children. There is no evidence of security violations or disciplinary actions by his employer.

### **Financial Considerations**

Applicant's history of delinquent debt is documented in his credit reports, SF 86, bankruptcy schedules, and SOR response. His SOR alleges: ¶ 1.a describes discharge of his nonpriority, unsecured debts under Chapter 7 of the Bankruptcy Code in 1997; ¶ 1.b details dismissal of his Chapter 13 Bankruptcy in October 2012; ¶ 1.c is a charged-off bank debt for \$11,338; ¶ 1.d is a collection-bank debt for \$9,706; ¶ 1.e is a charged-off credit card debt for \$1,544; ¶ 1.f is a charged-off credit card debt for \$991; ¶ 1.g is a charged-off bank debt for \$880; ¶ 1.h is a charged-off credit card debt for \$5,642; ¶ 1.i is a charged-off bank cred-card debt for \$10,675; and ¶ 1.j is a charged-off bank credit card debt for \$5,671.

In his April 30, 2014 SF 86, Applicant disclosed that he filed for bankruptcy protection to address debts totaling \$76,500. (Item 3) Applicant received financial counseling as part of the bankruptcy process. He generated a budget as part of the bankruptcy process. (Schedules I and J) His monthly gross income was \$5,852; his monthly net income was \$3,673; his monthly expenses were \$3,133; and his net monthly remainder was \$540. (Schedules I and J)

In April 2011, the trustee issued the bankruptcy plan requiring \$548 monthly payments with 34 percent allocated to general unsecured creditors. (Item 5) As of August 2012, Applicant was \$3,288 behind on his payments to the bankruptcy trustee.

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<sup>1</sup>Some details have been excluded in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

<sup>2</sup>Unless stated otherwise, the source for the information in this paragraph and the next paragraph is Applicant's April 30, 2014 Electronic Questionnaire for National Security Positions (e-QIP) (SF 86). (Item 3)

(Item 5) When the Chapter 13 Bankruptcy was dismissed in December 2012, the trustee's report indicated: creditors sought \$48,491; attorney fees were \$2,025; expenses of administration were \$2,302; and creditors were allocated \$4,812, which included \$2,000 for priority payments. (Item 5)

The file lacks documentary evidence from creditors that after the trustee's distribution in December 2012, Applicant paid, arranged to pay, settled, compromised, or otherwise resolved any of the delinquent accounts alleged in the SOR. The record lacks corroborating or substantiating documentation and detailed explanations of any other mitigating information and the effect on his current financial situation. The FORM noted that Applicant had 30 days from the receipt of the FORM "in which to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation, as appropriate. If you do not file any objections or submit any additional information . . . your case will be assigned to an Administrative Judge for a determination based solely" on the evidence set forth in this FORM. (FORM at 3)

In response to the FORM, Applicant said that he made his payments for 18 months under his Chapter 13 bankruptcy plan.<sup>3</sup> He told his bankruptcy lawyer that he could not afford to continue the payments under his Chapter 13 bankruptcy plan because he moved, and his rent and utilities increased. He stopped his payments to the Chapter 13 trustee, and his bankruptcy was dismissed. His lawyer told him "not to do anything but wait to hear from creditors." He said he paid off one debt; however, he did not provide any information about the debt he paid. He said he has not heard from any of his other creditors. He pays his rent and utilities on time. His debts are not due to gambling, drugs, or alcohol. There is nothing in his background that would cause him to be subject to extortion or coercion. He has held a security clearance for several years.

### **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the revised adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and

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<sup>3</sup>The source for the information in his paragraph is Applicant's FORM response.

commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, nothing in this decision should be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his [or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## **Analysis**

### **Financial Considerations**

AG ¶ 18 articulates the security concern relating to financial problems:

Failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

AG ¶ 19 provides two disqualifying conditions that could raise a security concern and may be disqualifying in this case: “(a) inability or unwillingness to satisfy debts;” and “(c) a history of not meeting financial obligations.” Applicant’s history of delinquent debt is documented in his credit reports, SF 86, SOR response, bankruptcy schedules, and FORM response. Applicant’s SOR alleges, and he admitted eight delinquent debts totaling \$46,447, discharge of his nonpriority, unsecured debts under Chapter 7 of the Bankruptcy Code in 1997, and dismissal of his Chapter 13 Bankruptcy in October 2012. The Government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c) requiring additional inquiry about the possible applicability of mitigating conditions.

Five mitigating conditions under AG ¶ 20 are potentially applicable:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;<sup>4</sup> and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

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<sup>4</sup>The Appeal Board has previously explained what constitutes a “good faith” effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the “good faith” mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant’s debts. The Directive does not define the term “good-faith.” However, the Board has indicated that the concept of good-faith “requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.” Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [the “good faith” mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

The Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

Applicant's conduct in resolving his delinquent debt does not warrant full application of any mitigating conditions to all of his SOR debts; however, he presented some important mitigating information. He said he made payments for 18 months into a payment plan under Chapter 13 of the Bankruptcy Code. However, that bankruptcy was dismissed in October 2012.

Applicant did not provide enough details about what he did to address his SOR debts after the trustee issued his report and distributed funds in December 2012. Applicant did not provide sufficient documentation relating to his SOR debts after December 2012: (1) proof of payments, such as checking account statements, photocopies of checks, or a letter from the creditor proving that he paid or made any payments to the creditors; (2) correspondence to or from any creditors to establish maintenance of contact with creditors;<sup>5</sup> (3) credible debt disputes indicating he did not believe he was responsible for the debts and why he held such a belief; (4) attempts to negotiate payment plans, such as settlement offers or agreements to show that he was attempting to resolve these debts; or (5) other evidence of progress or resolution of his debts.

Applicant failed to establish mitigation under AG ¶ 20(e) for any specific SOR debts because he did not provide documented proof to substantiate the basis of the dispute or the result of the dispute. There is insufficient evidence about why Applicant was unable to make greater progress resolving more of his SOR debts. There is insufficient assurance that his financial problems are being resolved, are under control,

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<sup>5</sup>"Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

and will not recur in the future. Under all the circumstances, he failed to meet his burden and establish that financial considerations security concerns are mitigated.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is a 59-year-old engineer employed by a defense contractor since 1997. In 1974, he graduated from high school, and he did not attend college. He has never served in the military. He pays his rent and utilities on time. His debts are not due to gambling, drugs, or alcohol. There is nothing in his background that would cause him to be subject to extortion or coercion. He has held a security clearance for several years. There is no evidence of security violations or disciplinary actions by his employer. He disclosed his financial problems on his SF 86.

The financial evidence against approval of Applicant's clearance is more substantial at this time. Applicant has a history of financial problems. Applicant's SOR alleges, and the record establishes: eight delinquent debts totaling \$46,447; discharge of his nonpriority, unsecured debts under Chapter 7 of the Bankruptcy Code in 1997; and dismissal of his Chapter 13 Bankruptcy in October 2012. He did not provide corroborating or substantiating documentary evidence of payments to his SOR creditors, payment plans, or his communications to those creditors after December 2012. He did not provide documentation showing his attempts to resolve any of his SOR debts in good faith after December 2012. The evidence of record shows lack of financial responsibility and judgment and raises unmitigated questions about Applicant's reliability, trustworthiness, and ability to protect classified information. See AG ¶ 18. More information about his inability to pay debts, financial history, or documented financial progress is necessary to mitigate security concerns.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. See *Dorfmont*, 913 F. 2d at 1401. Unmitigated financial considerations concerns lead me to conclude that grant of a security clearance to Applicant is not warranted at this time. This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With more effort towards documented resolution of his past-due debts, and a track record of behavior consistent with his obligations, he may well be able to demonstrate persuasive evidence of his security clearance worthiness.

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude that financial consideration concerns are not mitigated, and it is not clearly consistent with the national interest to grant Applicant security clearance eligibility at this time. Financial considerations concerns are not mitigated.

### **Formal Findings**

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a through 1.j:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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MARK HARVEY  
Administrative Judge